Acheson on Mallory

American justice requires that an arrested person be taken before a judicial officer "without unnecessary delay." This rule, enunciated by the Congress and the Supreme Court, and reiterated by the Supreme Court, has never been modified by Congress in the eight years since the *Mallory* decision, which was intended to ensure its observance.

In his letter to Chief Layton, United States Attorney Acheson, by irregular administrative fiat, has urged that the police of the District detain arrested persons for three hours and more, in violation of the rule. This is precisely what Justice Frankfurter, writing for a unanimous Supreme Court, called "willful disobedience of law" on the part of those to whom law enforcement has been entrusted.

Mr. Acheson would have police assume the judicial responsibility of determining probable cause immediately after arrest and of advising an arrested person of his rights. This is wholly inadequate. To quote again from a unanimous Supreme Court, commenting on this very procedure: "The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is divided into different parts . . .", both as an important safeguard to the innocent, and as insurance of the integrity of our system of justice.

If it is truly expected that the police will protect a citizen's rights as effectively as a judicial officer, what conceivable purpose is achieved by bypassing the judge? On the other hand, if anything less than full judicial protection is to be accorded by Mr. Acheson's proposal, is it not clear that fundamental rights would be violated? These rights include the right to counsel, the privilege against self-incrimination, and the equal protection of the laws.

For example, the recommended advice to be given by the police to the suspect who cannot afford a lawyer, suggests that the indigent suspect has no right to a lawyer until he "first goes to court." Whatever this may mean to a layman, it is certainly puzzling to a lawyer. At best, the suggestion is that the indigent may be deprived of counsel even after the police have decided that he is the guilty party.

Indeed, even the person who can afford a lawyer would be deprived by Mr. Acheson of his right to counsel at the discretion of the police. Yet the Supreme Court has also held unanimously that the general rule of prompt arraignment cannot be subordinated "to the discretion of arresting officers in finding exceptional circumstances for its disregard."

Finally, the procedure recommended by Mr. Acheson (whether or not he intends to do so) opens the door wide to the many abuses of unconstitutional arrest for investigation. If the police can hold a suspect for three hours or more to build up a case against him through self-incrimination, they are invited, by the same unlawful detention, to establish the probable cause required for arrest in the first instance. Mr. Acheson's proposal, therefore, will effectively remove the safeguards against dragnet arrests in which, only a few years ago, as many as 60 innocent citizens of the District were arrested at one time for interrogation about a single crime.

We demand respect for law from the ordinary citizen, and rightly so. We trust that it is not too much to expect the same from the United States Attorney for the District of Columbia, and that, upon due reflection, he will abandon his present policy of "outright defiance of law."

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